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January 16, 2003

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., SW
Washington, DC 20554

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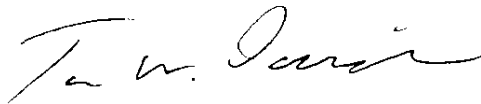
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: WC Docket No. 02-319

Dear Ms. Dortch:

The attached letter was filed via ECFS on the evening of January 15, 2003 on behalf of the Official Committee ("Committee") of Unsecured Creditors of WorldCom, Inc., et al. This copy is provided pursuant to the *ex parte* requirements set forth in the Designation Order.¹

Very truly yours,



Tom W. Davidson
Natalie G. Roisman
Nicholas G. Alexander

cc: J. Saulnier

¹ *Ameritech Operating Companies Tariff FCC No. 2, Transmittal No. 1313 et al*, WC Docket No. 02-319, Order, DA No. 02-2577 (rel. Oct. 10, 2002).

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., SW
Washington, DC 20554

Re: WC Docket No. 02-319

Dear Ms. Dortch:

The Official Committee ("Committee") of Unsecured Creditors of WorldCom, Inc., et al. ("WorldCom") submits this letter in response to the November 21, 2002 Response ("Response") of SBC Communications, Inc. ("SBC") in the above-referenced proceeding.¹ Specifically, the Committee seeks to emphasize to the Federal Communications Commission ("FCC") that, despite SBC's protestations to the contrary, SBC's proposal to revise its interstate access tariffs to allow SBC to demand a security deposit from a customer that is subject to a pending bankruptcy proceeding ("Debtor Customer") is both unlawful and a usurpation of the bankruptcy court's exclusive authority under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). As further discussed below, it is well settled that it is exclusively within the authority of the bankruptcy court to determine when and whether additional adequate assurance may be required of a Debtor Customer

SBC correctly states that, under the Bankruptcy Code, it is permissible for a utility, such as an incumbent local exchange carrier ("ILEC"), to seek a cash deposit as additional adequate assurance of payment from a Debtor Customer and that the courts will, in certain instances, mandate future payment of such a deposit. However, SBC fails to acknowledge that (i) it is the bankruptcy court's exclusive responsibility to determine the appropriateness of a deposit requirement and (ii) in determining whether a deposit is appropriate, a court will examine all of the relevant facts and circumstances of the individual case, including the Debtor Customer's past payment history, current revenues, liquidity, and other factors. In every case cited by SBC, the utility seeking additional adequate assurance sought bankruptcy court approval for mandating

¹ Ameritech Operating Companies (Ameritech), Tariff FCC No. 2, Transmittal No. 1312, Nevada Bell Telephone Companies (Nevada Bell), Tariff FCC No. 1, Transmittal No. 20, Pacific Bell Telephone Company (Pacific Bell), Tariff FCC No. 1, Transmittal No. 77, Southern New England Telephone Companies (SNET), Tariff FCC No. 39, Transmittal No. 272, Southwestern Bell Telephone Company (SWBT), Tariff FCC No. 73, Transmittal No. 2906 (filed Aug. 2, 2002), WC Docket No. 02-319, Response of SBC Communications, Inc. to Oppositions to the Direct Case (filed Nov. 21, 2002).

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Debtor Customer payment of an additional deposit. In each case, the bankruptcy court, in determining whether such approval was warranted, analyzed a variety of factors before issuing a decision.² The cases cited by SBC, therefore, effectively prove the Committee's point: It is the bankruptcy court, not an individual utility or regulatory agency, which is authorized to determine whether the payment of a security deposit is necessary after assessing the facts and circumstances of a particular case. Further, contrary to SBC's assertions, a mandate for a security deposit does not result in every case in which a utility customer has filed for bankruptcy protection. Specifically, in Caldor, In re WorldCom, Inc., et al., Adelphia Business Solutions, and In re Global Crossing Ltd., et al., no deposit was required.³ SBC's proposed tariff revisions would allow SBC to demand and hold a deposit from a Debtor Customer regardless of that Debtor Customer's ability to make full and timely payments, and before the necessity of any additional adequate assurance of payment could be objectively determined, thus usurping the bankruptcy court's authority. Were SBC's proposed tariff revisions to be approved, SBC would effectively short circuit the statutorily mandated bankruptcy process. It is the bankruptcy court, and no other party, which has the authority to determine what additional adequate assurance, if any, may be reasonably required by a utility providing service to a Debtor Customer.

Further, as recognized in the FCC's recent policy statement rejecting ILECs' attempts to revise their interstate access tariffs so as to arbitrarily demand burdensome security deposits from their carrier customers ("Policy Statement"), bankruptcy is not an accurate indicator of a Debtor Customer's ability to pay its bills on an ongoing basis.⁴ Indeed, companies enter bankruptcy in part to ensure that they will be able to continue to serve their customers and pay debts as they become due, under the direction, supervision and protection of the bankruptcy court. One need look no further for evidence that a company under bankruptcy protection can pay its bills than to WorldCom's commercial relationship with SBC in which it is our understanding that WorldCom continues to be current with all of its post-petition obligations to SBC.

Finally, the proposed tariff revisions are contrary to the rehabilitative nature of the Bankruptcy Code. Allowing SBC to use bankruptcy as a trigger for requiring security deposits would be inconsistent with the primary purpose of the Bankruptcy Code, which is designed to afford a

² See, e.g., SBC Reply at 18, note 49. ("In re Houdashell, 7 B.R. 901 (Bank. W.D. Mo. 1981) (court ordered deposit of two times debtor's highest bill in preceding twelve months taking into account, inter alia, unpaid prepetition balance, record of payment and deposit mandated by state regulations.)")

³ See Caldor at 2; In re WorldCom, Inc., et al., No. 02-13533 (A.J.G.), slip op. at 3 (Bank. S.D.N.Y. October 2, 2002); Adelphia Business Solutions, 280 R.R. at 68; In re Global Crossing Ltd., et al.; see also H.R. Rep., No. 95-595 at 350 (1977)

⁴ In the Matter of Verizon Petition for Emergency Declaratory and Other Relief, WC Docket No. 02-202, Policy Statement, FCC 02-337 (rel. Dec. 23, 2002) ¶ 14.; Policy Statement ¶ 21

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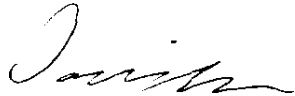
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company a "breathing spell" to reorganize.' Application of SBC's proposed security deposit provisions would constitute a penalty for filing for bankruptcy, frustrating the purpose of bankruptcy protection by saddling a company seeking to reorganize with an additional substantial expense. Moreover, the proposed tariff revisions, by their very nature, violate a basic tenet of the Bankruptcy Code by allowing SBC to discriminate against a debtor who files for relief under the Bankruptcy Code. The Bankruptcy Code specifically protects a debtor from such discrimination." Clearly, the imposition of a deposit requirement that would be triggered upon filing for bankruptcy would be discriminatory and in violation of the Bankruptcy Code.

In sum, SBC's proposed tariff modifications violate both the letter and the spirit of the Bankruptcy Code, and should therefore be rejected. Please do not hesitate to contact the undersigned should you have any questions.

Very truly yours,



Tom W. Davidson

Natalie G. Roisinan

Nicholas G. Alexander

cc: J. Saulnier

⁵ See, e.g., *In re Ionosphere Clubs, Inc.*, 105 B.K. 773 (Bankr. S.D.N.Y. 1989) ("The purpose of the protection provided by Chapter 11 is to give the debtor a breathing spell, an opportunity to rehabilitate its business and to enable the debtors to generate revenue.").

"See 11 U.S.C. § 365(e) (providing that "[n]otwithstanding a provision in an executory contract or unexpired lease, or in applicable law, any right or obligation under such contract or lease may not be terminated or modified at any time after the commencement of the case solely because of a provision in such contract or lease that is conditioned on (A) the insolvency or financial condition of the debtor at any time before the closing of the case; (B) the commencement of a case under this title . . .").